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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 313

BROTHERHOOD OF RAILROAD TRAINMEN, ET AL.,
Petitioners,

vs.

CHICAGO RIVER & INDIANA RAILROAD COMPANY, ET AL.,
Respondents.

On Petition For a Writ of Certiorari to The United States Court of Appeals for The Seventh Circuit

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BRIEF FOR THE RESPONDENTS IN OPPOSITION

Opinion Below

The district court's findings of fact, conclusions of law, and decree will be found at pages 61 to 67 of the petition for certiorari. The judgment of affirmance by the court below will be found at pages 67 to 68 of the petition and was based on its prior ruling reported in 229 F. 2d 926 (Pet. 37-45).

Jurisdiction

The judgment of the court of appeals sought to be reviewed was entered on May 17, 1956 (Pet. 67-68). The petition for a writ of certiorari was filed on August 13, 1956. The jurisdiction of this Court is invoked under Section 1254(1) of the Judicial Code.

Questions Presented

1. Did Congress make the National Railroad Adjustment Board's jurisdiction mandatory for both sides in grievance cases?

2. May a federal court enforce mandatory provisions of the Railway Labor Act?

Statute Involved

The pertinent provisions of the Railway Labor Act (45 U. S. C. § 151, *et seq.*) are set out in Appendix A, *infra*.

Statement

This case arises from the refusal of the Brotherhood of Railroad Trainmen to permit grievances submitted to the National Railroad Adjustment Board to be decided by that Board.

This case involves grievances, which are known as the "minor disputes" of the railway labor field. This case has nothing to do with the ability to strike in order to enforce collective bargaining demands, which are the "major disputes". These grievances are the every-day petty problems which arise in the operation of any contract. They usually affect one or a few employees. That is the reason the framers of the 1934 Railway Labor Act and the judges interpreting it have held the Adjustment Board route to be compulsory. The time claims of a few men should not be the cause for putting hundreds or thousands of railroad employees out of work.

The feeling of the framers and the courts was epitomized by Commissioner Eastman, the Federal Coordinator of Transportation who was the principal draftsman of the 1934 amendments which established the Adjustment Board:

> "Well, it is my own opinion that there ought not to be strikes with reference to minor grievances of that sort. I should be very unwilling to take away from the employees the right to strike on major issues, but these are not major issues." (Hearings, House Committee on Interstate and Foreign Commerce (73d Cong., 2d Sess.), on H. R. 7650, p. 61.)

Because these minor disputes are bound to occur, and because they are readily susceptible of adjudication on an individual basis, the Adjustment Board was instituted to handle them upon presentation by the employee, his union, or the railroad concerned.

The case involves 21 individual claims of employees of one of respondents, The Chicago River and Indiana Railroad Company, (hereafter referred to as the River Road), relating to the interpretation or application of existing contracts.

The claims are 19 claims for extra pay, 1 claim for reemployment, and 1 claim for reinstatement in a yard foreman's job. The union and the employees exhausted negotiations on the property. (R. 9-10.[1]) The proper step thereafter is for the interested employee, usually through his union, to submit to the Adjustment Board (or a system board) such of his grievances as he wishes to process further. In fact, a contract to which the River Road and the Trainmen are parties provides that the decision of the highest officer on the carrier designated to handle the claims shall be binding and final unless "proceedings * * * are instituted" within one year thereafter (R. 10.) Instead of instituting such proceedings in the Adjustment Board, the Trainmen accumulated these grievances and called a strike (R. 10).

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1. The record references throughout this brief are to the record in No. 11744 in the court below.

Because of the serious nature of this threatened strike, the National Mediation Board, on its own volition, proffered its services, docketed the dispute as Case A-4524, and sent representatives to mediate the dispute (R. 10). The River Road agreed to accept the proposals of the Mediation Board, but the union remained adamant (R. 13, 23). The Mediation Board then informed the parties by telegram that its efforts had failed (R. 10). Instead of following Section 5 First of the Railway Labor Act (45 U.S.C. § 155 First), which requires that the parties wait 30 days after mediation has failed before striking, the union promptly called the strike for 4 days later (R. 11). In a last effort to insure the following of orderly procedures, the River Road filed the grievances with the Adjustment Board, but a strike was called despite this (R. 10-11).

Thereupon respondents brought this action to compel the union to follow the orderly procedures of the Railway Labor Act, that is, to permit the processing of the 21 grievances through the Adjustment Board where they are pending. The complaint and amended complaint were both verified. (R. 5, 7-13.) Appropriate relief was decreed by the district court (Pet. 66-67) after the court of appeals rendered its opinion (Pet. 37-45). The decree in favor of respondents was thereafter affirmed (Pet. 67-68).

The Procedures of the Railway Labor Act

This case involves the Railway Labor Act of 1926, as amended. The "as amended" refers to extensive revisions made in the Act in 1934.

In 1926 the railroads and the unions submitted to Congress an agreed draft of the Railway Labor Act. Congress passed that Act as drafted. The 1926 Act provided for the handling of major disputes over future agreements by a procedure of mediation, arbitration, and investigation by an emergency board which would report its findings to the

President of the United States. That Act intended that questions of contract changes, wage increases, and like matters would go through this process before either side would resort to self-help—before the railroads would lock out or the brotherhoods would strike. The 1926 Act did not have any mandatory features for the settlement of grievances or of disputes arising from the interpretation or application of existing agreements.

In 1934, the Federal Coordinator of Transportation, Commissioner Joseph B. Eastman of the Interstate Commerce Commission, at the behest of the unions, presented to Congress amendments to the 1926 Act. Congress adopted these amendments. The first important amendment added a specific statement of the purposes of the Act to the statute (Section 2 of the Act, 45 U.S.C. § 151a). Other amendments clarified or strengthened the procedure for creating bargaining agreements by collective bargaining. Probably the most important amendment was to change Section 3, which concerned grievances, from a permissive section. The new Section 3 First created the National Railroad Adjustment Board to handle grievances and the interpretation or application of agreements (45 U.S.C. § 153 First).

The 1934 Act contemplates two broad classifications of disputes. One group of disputes, the major disputes, are "disputes concerning rates of pay, rules, or working conditions"—that is, the arriving at collective bargaining contracts for the future. The other group of disputes, the minor disputes, are "disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions." ("General Purposes," Section 2 of the Railway Labor Act, 45 U.S.C. § 151a).

The first group of disputes relates to negotiating new contracts. If the parties are unable to agree by themselves on a new contract, the Act provides an opportunity to invoke mediation. The National Mediation Board may even intervene on its own initiative if it thinks there is a need. If mediation should fail, the Mediation Board shall attempt to persuade the parties to submit their problems to arbitration. The Act makes such arbitration binding, if the parties elect to agree to it. If the parties do not agree, then the next step is for the Mediation Board to decide whether to inform the President of the United States that an emergency exists. The President may then appoint an emergency board to investigate and report back to him the merits of the dispute. The hope is that the pressure of public opinion will cause the parties to settle their differences along the lines of that board's report.

The other group of disputes concerns grievances and questions growing out of the operation of existing contracts. If these are to be progressed beyond the local officers of the railroad and the union, Section 3 First provides for their being filed with the National Railroad Adjustment Board.

The Adjustment Board is divided into 4 divisions, depending on the nature of the cases. Disputes involving yard-service employees go to the First Division of the Board. The First Division is composed of 10 members. Five of these members are called Labor Members, and five are called Carrier Members. The Labor Members are officers of the various unions, and among them is a vice president of the Trainmen.

This Board hears claims. If the members split evenly on a claim and cannot agree on a neutral referee, the National Mediation Board will appoint a referee to break the tie. Petitioner Brotherhood's interests are well protected on this Board since, as noted, one of its vice presidents is

a member of the First Division where these claims are pending.

Nor is the record of the Board such as to dismay the petitioner Brotherhood. One study found that approximately two-thirds of the decisions had been in favor of labor, and that the percentage would have been higher except that the unions deliberately arranged to present a certain number of "sure losers" so as to adjust the ratio. Northrup and Kahn, Railroad Grievance Machinery: A Critical Analysis (1952) 5 Industrial & Labor Relations Rev. 365, 381.

The parties may also agree to submit their grievances to special adjustment boards set up locally or specially, subject to the right of either side to discontinue this practice and revert back to the jurisdiction of the national Board (Section 3 Second, 45 U. S. C. § 153 Second).

Theoretically, these two lines of major and minor disputes will not cross. However, in recent years the petitioner union and one or two other unions have adopted the practice of accumulating grievances and threatening a strike over them. That is what was done in this case. If the strike is likely to be of national harm, the Mediation Board will try to settle it even though the matter is not within its jurisdiction. As that Board has explained in its annual reports, these disputes are to be routed to the Adjustment Board:

> "However, the National Mediation Board has found it necessary in some instances during recent years to proffer its mediatory services under section 5, First (b) of the act when the failure of the parties to settle dockets of time claims and grievances, or to refer them to the proper tribunal, the Adjustment Board, created emergency situations which threatened to result in strikes." (18th Annual Report of the National Mediation Board (1952) p. 5.)

These same comments have been made in recent years by the Mediation Board in other reports.

Formerly the Mediation Board has even recommended that some of these matters be referred to an emergency board. In 1954 the Mediation Board announced that it was refusing to recommend that the President appoint emergency boards to consider claims like those in this case. 20th Annual Report of the National Mediation Board (1954), p. 22. Thus although the Mediation Board intervened in this case, it did not recommend an emergency board.

ARGUMENT

There are two basic reasons why certiorari should be denied in this case:

(1) The court of appeals was clearly correct in its decision.

(2) There is not any actual conflict among the circuits on this matter.

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1. The holding below that the federal courts may enforce the Congressional commands in the Railway Labor Act was necessary. The Railway Labor Act, or that part applicable here, does not have any agency other than the courts for its enforcement. To hold that the federal courts cannot act is to hold that the Railway Labor Act is unenforceable.

The court of appeals arrived at its holding by following a long line of decisions by this Court that the federal courts must enforce the Railway Labor Act and are not prevented from doing so by the Norris-LaGuardia Act. *Brotherhood of Railroad Trainmen* v. *Howard*, 343 U.S. 768, 774; *Graham* v. *Brotherhood of L. F. & E.*, 338 U. S. 232, 239-240; *Steele* v. *Louisville & N. R. Co.*, 323 U. S. 192, 207; *Tunstall* v. *Brotherhood of L. F. & E.*, 323 U. S. 210; *Virginian R. Co.* v. *System Fed. No. 40*, 300 U. S. 515, 562-563; cf. *Texas & N.O.R. Co.* v. *Brotherhood of Clerks*, 281 U. S. 548.

Petitioners have attempted to distinguish these cases, or at least the more recent ones, by stating that they were necessary to right discriminations by unions against Negroes (Pet. 28-30). But there is nothing in the Norris-

LaGuardia Act which makes an exception for a Negro. To reverse the present case would be to repudiate the foregoing cases.[2]

The Brotherhood also argues that resort to the Adjustment Board is not mandatory for the Brotherhood. It argues that this procedure was provided as a convenience which the Brotherhood officers may use if they feel moved to do so, or may reject if they prefer to throw all members out of work over the grievances of a few individuals (Pet. 17, 23).

It is important to note that the Brotherhood does not argue that the railroads may also ignore the Board. As this Court well knows, it has long been recognized that the railroads must subject themselves to the Adjustment Board procedure. The effect of the Brotherhood's argument is to read into the Railway Labor Act language that the Adjustment Board is mandatory for the railroads, but not for the Brotherhood (cf. Pet. 58-59).

The injunction here does not impinge on the policies of the Norris-LaGuardia Act. This injunction does not take sides—does not help one group rather than the other. This injunction is not like one against a strike over future contract terms. An injunction there may delay the individual employee's bettering his work conditions or his pay. But a strike here is not for future rights. It is over some grievance growing out of past contracts. Employees are not benefited by a strike over grievances; rather, they are benefited when a minor individual grievance can be settled without throwing everybody else out of work. It should be noted that the Adjustment Board regularly awards back

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2. Presumably petitioner Brotherhood, which has been involved in racial disputes, would like to see such a repudiation. Cf. *Brotherhood of Railroad Trainmen* v. *Howard*, 343 U. S. 768; *Rolfes* v. *Bwellingham*, 198 F. 2d 591 (C.A. 8, 1952); *Brotherhood of R. Trainmen* v. *Templeton*, 181 F. 2d 591 (C.A. 8, 1950), certiorari denied, 340 U.S. 832; *Hunter* v. *Atchison, T. & S. F. R. Co.*, 171 F. 2d 594 (C.A. 7, 1948), certiorari denied 337 U.S. 916.

pay for well-founded grievances, so that delay is disadvantageous to the railroad and does not penalize the employees. An injunction here protects all parties and the public by requiring that these grievances be settled by the administrative body which Congress considers capable of handling the matter (see Pet. 60).

Although behind the Norris-La Guardia Act is the laudable purpose of protecting the legitimate interests and activities of organized labor, behind the Railway Labor Act is the equally basic and fundamental purpose of protecting the public against the widespread chaos and hardships that result from application of the "law of the jungle" in labor relations on key transportation systems.

A. *The Railway Labor Act requires that grievances be submitted to the Adjustment Board (or system boards) when processed beyond the carrier.*

Grievances arise out of the application of existing contracts to individual situations. Grievances are usually settled by interpreting and applying existing contractual language. As can be seen, this type of dispute can be handled by a procedure comparable to adjudication. As can also be seen, these are disputes which will be cropping up constantly under the administration of any kind of contract. The employees cannot afford to strike every time a few of their fellows feel aggrieved.

By 1934, the unions found the enforcement of such grievances by strike to be too burdensome. They asked Congress to replace the prior chaos with orderly procedure. Congress complied by creating the mandatory Adjustment Board procedure, a procedure the unions had sought since their World War I experience with adjustment boards during federal management of the railroads. This procedure was recently discussed in a submission of the Order of Railroad Telegraphers to the Third Division of the Ad-

justment Board in Docket TE-6699 (p. 85): "But the sole point in enacting the [1934] legislation was to provide a means whereby these disputes 'growing out of grievances or out of the interpretation or application of agreements * * *', could be settled without resort to the only other means within the command of labor * * *", *viz.*, strikes.

After 20 years of acceptance on the part of the courts, the unions, and the railroads that the Adjustment Board procedure is mandatory for all parties, this union now insists that it can disregard the Board according to its own whim. It should be noted that this union's argument is limited to a procedure discretionary only for the union. The procedure is still mandatory for everybody else. The petition will be perused in vain for any suggestion that the railroads have any discretion to ignore the Adjustment Board.

Actually, this Court has made quite clear that the privilege claimed by petitioners is not theirs. As this Court noted in *Order of R. Conductors* v. *Southern R. Co.*, 339 U.S. 255, 256-7:

> "And if a carrier or a union could choose a court instead of the Board, the other party would be deprived of the privilege conferred by § 3 First (i) of the Railway Labor Act, 48 Stat. 1191, 45 U.S.C. § 153 First (i), which provides that after negotiations have failed 'either party' may refer the dispute to the appropriate division of the Adjustment Board."

It is true that that case held that the carrier could not take the matter to court. We do not believe that this Court meant to say that one cannot frustrate the Adjustment Board by going into a court, but one may frustrate it by lock-out or strike, especially where, as here, the claims are pending before the Adjustment Board.

On another occasion this Court discussed some of the aspects of the Adjustment Board procedure. Thus in

Elgin, J. & E. R. Co. v. *Burley*, 325 U.S. 711, 727, the Court stated that Congress in 1934 changed from voluntary arbitration of grievance disputes to compulsory arbitration of them:

> "The procedure is in terms and purpose very different from the preexisting system of local boards. That system was in fact and effect nothing more than one for what respondents call 'voluntary arbitration' • • • The Adjustment Board was created to remove the settlement of grievances from this stagnating process and bring them within a general and inclusive plan of decision. The aim was not to dispense with agreement. It was to add decision where agreement fails and thus to safeguard the public as well as private interests against the harmful effects of the preexisting scheme."[3]

The *Burley* case reached the following conclusion (at p. 727):

> "The procedure adopted is not one of mediation and conciliation only, like that provided for major disputes under the auspices of the Mediation Board. Another tribunal of very different character is established with 'jurisdiction' to determine grievances and make awards concerning them. Each party to the dispute may submit it for decision, whether or not the other is willing, provided he has himself discharged the initial duty of negotiation."

Emphasis should be given to that sentence, "Each party to the dispute may submit it for decision, *whether or not the other is willing* • • •." This is the heart of the 1934 grievance amendment. In the present case, the River Road has submitted the grievances to the Adjustment Board.

This Court was only repeating what Congress itself had been told by the draftsmen and advocates of the 1934

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3. See also *Slocum* v. *Delaware, L. & W. R. Co.*, 339 U. S. 239, 242. *Walters* v. *Chicago and North Western Railway Co.*, 216 F. 2d 332, 335 (C.A. 7, 1954); *Rolfes* v. *Dwellingham*, 198 F. 2d 591 (C.A. 8, 1952).

amendments. This Court in the *Burley* case cited, as its source for its conclusion that the Adjustment Board procedure was compulsory, the key labor witness before the Congressional committees. This man, who spoke for the national standard railway labor organizations, was the then and now grand president of the Brotherhood of Railway and Steamship Clerks, Mr. George M. Harrison. At that time he appeared for the "standard" unions, including the Trainmen. This Court quoted the following testimony of President Harrison (the emphasis in this quotation is this Court's):

> "These *railway labor organizations have always opposed compulsory determination of their controversies.* We have lived a long time and got a lot of experience, and we know that these minor cases that develop out of contracts that we make freely, and * * * *we are now ready to concede that we can risk having our grievances go to a board and get them determined, and that is a contribution that these organizations are willing to make.*" (325 U.S. at p. 728, n. 24.)

Mr. Harrison then said (Hearings, Senate Committee on Interstate Commerce (73d Cong., 2d Sess.) on S. 3266, p. 35):

> "I just want to tie this tail on to that kite—if I may express it that way—that if we are going to get a hodgepodge arrangement by law, rather than what is suggested by this bill, then we don't want to give up that *right,* because we only give up the *right* because we feel that we will get a measure of justice by this machinery that we suggest here." (Emphasis supplied.)

What "right" is being given up, if not the "right to strike?" Mr. Harrison of course knew that in return the 1934 Railway Labor Act makes awards of the Adjustment Board judicially enforceable against carriers (Section 3 First (p)).

Contrary to the slighting remarks made at page 20 of the petition, George Harrison is a man whose remarks must be

given great weight. Those members of this Court who have served in Congress undoubtedly recall the many times through the years that legislation has been proposed under Mr. Harrison's auspices. He was, of course, for years the chairman of the Railway Labor Executives Association. More recently he has also become vice president of the AFL-CIO.

If there were any question about the intent of Congress in 1934, a study of the legislative history would set it to rest.

The draftsman of these amendments, Commissioner Eastman, told both the Senate Committee and the House Committee when discussing the establishment of the Adjustment Board:

> "The willingness of the employees to agree to such a provision is, in my judgment, a very important concession and one of which full advantage should be taken in the public interest. I regard it as, perhaps, the most important part of the bill." (Hearings before the Senate Committee on Commerce (73d Cong., 2d Sess.) on S. 3266, p. 17; Hearings before the House Committee on Interstate and Foreign Commerce (73d Cong., 2d Sess.) on H. R. 7650, p. 47.)

In the House Committee, Mr. Eastman discussed the Adjustment Board procedure as follows (at pp. 59-61):

> "Now, the proviso on page 10 protects the individual who wants to walk out but it does not cover collective action in walking out.[4]
>
> "Mr. Pettengill. Your interpretation there, Mr. Commissioner, would be that under the language at the bottom of page 17, although the individual may be free to walk out, the organization would not be free to

4. This refers to Section 2 Tenth (45 U. S. C. 152 Tenth), which conforms the Railway Labor Act to the Thirteenth Amendment of the Constitution by confirming the right of any individual to refuse to work, no matter what limitations other Sections of the Act place upon the power of his union to call a strike. The decree herein respects this provision (Pet. 67).

call a strike after an award had been made on these matters that are covered by the language at the bottom of page 17.

"Commissioner Eastman. Well, that is my understanding; yes sir.

* * * * *

"Mr. Lea. Under that proviso, in the tenth subdivision, do you take it that that draws a distinction between an individual quitting his employment and the employees agreeing collectively to quit?

"Commissioner Eastman. Yes sir. * * *

* * * * *

"Commissioner Eastman. Well, as I say, you have exactly similar provisions in the present labor act with respect to decisions by adjustment boards and where they agree to arbitration, and this law is in effect an agreement on the part of the parties to arbitrate all of these minor disputes.

"The Chairman. Was that not one of the reasons, to try to keep down strikes to get people together?

"Commissioner Eastman. Yes. It is a very important part of it. The willingness of the employees to agree to a provision of that sort seemed to me to be a very important and praiseworthy thing.

* * * * *

"Commissioner Eastman. Well, it is my own opinion that there ought not to be strikes with reference to minor grievances of that sort. I should be very unwilling to take away from the employees the right to strike on major issues, but these are not major issues."

When asked whether the Act prohibited strikes over grievances, Mr. Eastman asked his legal advisor, Mr. Carmalt to answer this. Mr. Carmalt was one of those who drafted the amendments. He testified as follows (House Hearings, page 63):

"Mr. Carmalt. My opinion is that there should not be the right to strike over grievances of this kind where the Government has provided the machinery whereby the grievances may be considered by an impartial board.

"Mr. Wolverton. Do you think that the language that has been referred to by Mr. Eastman, as conferring this absolution, so to speak, so far as an employee is concerned [see note 4, *supra*], would provide equal protection to the organization itself?

"Mr. Carmalt. No; I think this injunction would run rather as against a strike. There is no other means of resisting the order. But, as to an individual quitting, I think the absolution would be effective.

"Mr. Wolverton. Do you think that the absolution that has been given the employee should likewise be given to the organization?

"Mr. Carmalt. Oh, no.

"Mr. Wolverton. What?

"Mr. Carmalt. No.

"Mr. Wolverton. What did you say?

"Mr. Carmalt. No. The employees, in their drafting of the bill, put that absolution in, and in redrafting the bill we took the language of the present act which would not give that absolution to the organization.

"Mr. Wolverton. So then you assume that under the provisions of this bill an injunction could issue to prevent an organization from going on strike?

"Mr. Carmalt. Such an injunctive process as might be necessary to prevent the strike growing out of the settlement of grievances under section 3, I should believe would lie."

The salient testimony given by George Harrison for this Brotherhood and the others to the Senate Committee has already been quoted from the *Burley* case, 325 U.S. 711, 728, note 24. This appears in the Senate Hearings, p. 35;

see also pp. 31, 33, 34, 167. Mr. Harrison told the House Committee substantially the same thing. House Hearings, pp. 81-82, 83, 89. He offered the same explanation to the membership of the unions in an article in 1934, "Railway Labor Act", 41 American Federationist 1053, 1057.

Thomas P. O'Brien, representing the International Brotherhood of Teamsters, also recognized that Section 3 First substituted compulsory adjustment for strikes over grievances (House Hearings, p. 118). Martin W. Clement, who was the spokesman for the railroads, agreed with the interpretation of Messrs. Eastman, Harrison and O'Brien (Senate Hearings, pp. 67, 69; R. 26-27).

The drafting committees accepted the word of these witnesses. Each committee reported to its respective House that the bill provided compulsory boards of adjustment. Senate Report No. 1065, 73d Cong. 2d Sess. (1934) pp. 1-2; House Report No. 1944, 73d Cong., 2d Sess. (1934) pp. 1-3, 4.

In addition, the members of each House expressed on the floor of their House what they thought the bill did. Thus the manager of the bill in the Senate, Senator Dill, said (78 Cong. Rec. 12083):

> "The bill has in it provisions which the railroad employees of the country and their organizations are backing. They have agreed to submit to compulsory arbitration of their [grievance] disputes. That is a new thing in the labor world. That is something which has not been secured in any prior labor legislation that has been proposed."

Similarly, Representatives expressed the view that this bill would provide for peace in the area of grievances (78 Cong. Rec. 11714, 11716). Among these were Representatives Joseph Martin (78 Cong. Rec. 11718) and Sam Rayburn (78 Cong. Rec. 11720).

Finally, although Congress at that time, June 1934, was prepared to adjourn, it was asked to stay long enough to amend the 1926 Act to make strikes over grievances unnecessary. This request was presented in a June 14, 1934, letter from the Secretary of Labor, Miss Perkins, and the Federal Coordinator of Transportation, Commissioner Eastman, to President Roosevelt and read to the Senate:

> "The Coordinator has drafted amendments to the Railway Labor Act designed to * * * provide for compulsory adjustment of individual grievances. * * *
>
> "If the proposed amendments are not enacted [as to features not relevant here] * * * a host of strike threats and other labor difficulties will arise this summer, demanding Presidential intervention. Similar difficulties are also likely to result because of the unavailability of adequate grievance-adjustment machinery as proposed by the amendments." (78 Cong. Rec. 12375.)

Congress passed that bill, which became the 1934 amendments to the Railway Labor Act, 48 Stat. 1185. This statement of Commissioner Eastman that the 1934 Act provides for "compulsory adjustment of individual grievances" represented his final views on this subject (cf. Pet. 19).

A decision that the adjustment procedure is not mandatory and exclusive would make nonsense of the 1934 amendments to the Act. Such a holding would say that Congress did nothing significant in enacting the 1934 Adjustment Board amendments. A process to which either side may put a halt at will is not useful and would be completely contrary to the construction adopted in the cases that the Railway Labor Act permits either party to disputes to take grievances to the Adjustment Board even though the other party is not willing. The petitioners' view is that the railroads, the unions, and the courts have all been in error for the past years in considering that grievances processed beyond the railroad property have to be taken to the

Adjustment Board (or to system boards). The statute, its judicial construction and its legislative history compel the conclusion that grievances must be settled by the Adjustment Board rather than by strike.

B. *Federal courts may enforce mandatory provisions of the Railway Labor Act.*

The Railway Labor Act, as involved here, does not establish enforcement agencies as does the Labor-Management Relations Act in the industrial labor field. The various bodies set up under the Railway Labor Act, such as the Mediation Board or the Adjustment Board, are not the sort of administrative agency which is able to police its area of authority. The function of making decisions or enforcing orders was deliberately withheld from the Mediation Board so that all sides would regard it as neutral (Hearings on S. 3266, Senate Committee on Interstate Commerce, 73d Cong., 2d Sess. (1934), pp. 134-135). The Adjustment Board is empowered only to adjudicate such claims as are submitted to it by one or both parties. The emergency boards are created in each instance for only 30 days, and can only investigate. Arbitration boards only exist if the parties by agreement create them.

As a result, if the courts cannot enforce mandatory provisions of the Railway Labor Act, such as are involved here, the provisions are unenforceable. Prior to the 1926 Railway Labor Act, it was held that the Act of 1920 was not enforceable in court. Accordingly, that Act ceased to be followed by both sides and the 1926 Act had to be drafted. *Pennsylvania R. System Federation No. 90* v. *Pennsylvania R. Co.*, 267 U.S. 203.

This Court's first case under the 1934 amendments to the Railway Labor Act, *Virginian R. Co.* v. *System Fed. No. 40*, 300 U.S. 515, considered this same problem. The Act commanded collective bargaining. The argument was made, as it is in this case, that Congress intended to ex-

clude enforcement of that duty from the jurisdiction of the courts. The argument was rejected. Instead, this Court held that the Act would be unenforceable unless the courts did have the power to enforce it. This was in line with the holding under the 1926 Act in *Texas & N. O. R. Co.* v. *Brotherhood of Clerks,* 281 U.S. 548. There, Chief Justice Hughes, speaking for a unanimous Court, said (at p. 569):

> "As the prohibition was appropriate to the aim of Congress, and is capable of enforcement, the conclusion must be that enforcement was contemplated.
>
> "The absence of penalty is not controlling. The creation of a legal right by language suitable to that end does not require for its effectiveness the imposition of statutory penalties. Many rights are enforced for which no statutory penalties are provided. In the case of the statute in question, there is an absence of penalty, in the sense of specially prescribed punishment, with respect to the arbitral awards and the prohibition of change in conditions pending the investigation and report of an emergency board, but in each instance a legal obligation is created and the statutory requirements are susceptible of enforcement by proceedings appropriate to each. The same is true of the prohibition of interference or coercion in connection with the choice of representatives. The right is created and the remedy exists."

Petitioners do not really challenge this proposition. They meet it, rather, by arguing that the Norris-LaGuardia Act prevents this judicial enforcement. They say (Pet. 16, note 5; see also Pet. 23-27) even if it is true that the mandate of Congress will be only a pious wish unless courts can enforce this mandate, still the courts cannot enforce it and the public must look to other remedies, which we know do not exist.

But this Court has many times rejected this same argument. It was raised in the already cited *Virginian R. Co.* v. *System Fed. No. 40,* 300 U.S. 515, also under the 1934 amendments. Mr. Justice Stone concluded for this Court,

at pages 562-563, that the provisions of the Railway Labor Act "render nugatory the earlier and more general provisions of the Norris-LaGuardia Act." In the earlier *Texas & N.O.R. Co.* v. *Brotherhood of Clerks,* 281 U.S. 548, it was argued that Section 20 of the Clayton Act prevented an injunction. The Clayton Act was held inapplicable for other reasons, but Chief Justice Hughes' opinion also noted (at p. 571):

> "It may be doubted whether Section 20 can be regarded as limiting the authority of the court to restrain the violation of an explicit provision of an act of Congress, where an injunction would otherwise be the proper remedy."

Cases subsequent to these cases have followed their reasoning. In fact, speaking, *inter alia,* of the Adjustment Board provisions, the Court stated in the *Burley* case (325 U.S. 711, 721-722, note 12):

> "Thus, one of the statute's primary commands, *judicially enforceable,* is found in the repeated declaration of a duty upon all parties to a dispute to negotiate for its settlement. See note 26 [referring to Section 3 First (i) and other Sections of the Railway Labor Act]. * * *." [Italics supplied.]

Another recent such pronouncement is from *Brotherhood of Railroad Trainmen* v. *Howard,* 343 U.S. 768, 774 (1952):

> "Our conclusion is that the District Court has jurisdiction and power to issue necessary injunctive orders [to enforce the Railway Labor Act] notwithstanding the provisions of the Norris-LaGuardia Act."

In that case the Trainmen, the same union as is petitioner in this case, had by strike threats forced an employer to discriminate against other employees (see 343 U.S. at p. 771). The district court was ordered to remedy this situation and was told it was free to award appropriate relief (343 U.S. at p. 775), which could of course include enjoining the resumption of the strike threats.

In another case, *Graham* v. *Brotherhood of L.F. & E.*, 338 U.S. 232, 239-240, this Court held that injunctive relief was appropriate:

> "Nor does the Norris-LaGuardia Act contain anything to suggest that it would deprive these Negro firemen of recourse to equitable relief from illegal discriminatory representation by which there would be taken from them their seniority and ultimately their jobs. Conversely there is nothing to suggest that, in enacting the subsequent Railway Labor Act provisions insuring petitioners' right to nondiscriminatory representation by their bargaining agent, Congress intended to hold out to them an illusory right for which it was denying them a remedy. If, in spite of the *Virginian*, *Steele*, and *Tunstall* cases, *supra*, there remains any illusion that under the Norris-LaGuardia Act the federal courts are powerless to enforce these rights, we dispel it now. The District Court has jurisdiction to enforce by injunction petitioners' rights to nondiscriminatory representation by their statutory representative."[5]

These decisions reason that it would be senseless for Congress to require certain action by the 1934 amendments to the Railway Labor Act, if Congress meant the earlier provisions of the Norris-LaGuardia Act to prevent the federal courts from enforcing mandatory provisions of the later Act.

Petitioners have tried to distinguish these cases by saying that they involve special circumstances which do not apply here. What petitioners cannot avoid is that in each of these cases this Court felt that the Norris-LaGuardia Act would have prevented judicial action, absent the need to enforce the Railway Labor Act.

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5. See also *Steele* v. *Louisville & N. R. Co.*, 323 U. S. 192, 207; *Tunstall* v. *Brotherhood of L. F. & E.*, 323 U. S. 210; *Rolfes* v. *Dwellingham*, 198 F. 2d 591, 594 (C.A. 8, 1952).

It is true that the *Clerks* case in 1932 and the *Virginian* case in 1937 affirmed injunctions against railroads. But some of the subsequent relevant cases here have involved injunctions against unions which committed misdeeds by use of strikes or threats to strike (see pp. 22-23, *supra*). The only way those cases could be avoided would be for the Court to repudiate them, which it should not do. The court below properly chose acceptance rather than repudiation (Pet. 42).

2. This Court has been told that the present case is in conflict with the decision of the Fifth Circuit in *Brotherhood of R. Trainmen* v. *Central of Georgia R. Co.*, 229 F. 2d 901 (Pet. 13-16). The cases do not involve the same questions and, therefore, do not contradict each other. This very Brotherhood has so contended in another case pending here (Pet. 15). Its contentions appear in Appendix B, *infra*.

The present case turns on whether strikes over grievances are permitted. The *Central of Georgia* case does not involve grievances. It involves a strike to obtain a new contract. This is a major dispute, which is governed by entirely different procedures (see Pet. 39-41). Despite petitioners' assertions (Pet. 15), the Seventh Circuit was fully cognizant that the major and minor disputes are treated differently under the Act (Pet. 41) and its holding was carefully confined to the minor disputes (Pet.42, 45, 68).

It is true that in the *Central of Georgia* case this Brotherhood had convinced the Supreme Court of Georgia that the dispute was one appropriate for the Adjustment Board (85 S.E. 2d 413). One might well feel that the Brotherhood should be hoist by its own petard. But such a feeling cannot change the actual facts of the case. That case involves a demand for a new contract. It involves nothing less or more. It is not an Adjustment Board case. Indeed, the Adjustment Board has not progressed it. It is true that the Fifth Circuit's opinion does not reflect this difference. But the bases for a decision often do not actually appear

in the opinion. Presumably such a vital difference was taken into account, but in any event the difference in the two cases prevents a conflict.

CONCLUSION

There has been a growing tendency to strike over grievances, which is the very menace that the Adjustment Board was designed to eliminate. Unless the judgment below remains undisturbed, strikes over grievances will continue to multiply and the Adjustment Board will become a hollow shell. Respondents are not asserting that the Railway Labor Act bans strikes over the "major disputes" after the processes of the Railway Labor Act have been exhausted. However, it is their firm conviction that the principal purpose of amending the Railway Labor Act in 1934 was to ban strikes over grievances, the "minor disputes," by providing compulsory arbitration of grievances by the Adjustment Board. This mandatory duty to process grievances before the Adjustment Board must be enforced by the courts. The decisions under the Norris-LaGuardia Act make it plain that the courts are free to enforce mandatory provisions of the Railway Labor Act.

Because the decision below is correct and there is no actual conflict of decisions, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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APPENDIX A

Section 2 of the Railway Labor Act (45 U.S.C. 151a) provides in part:

"GENERAL PURPOSES

"(1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; • • • (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions."

Section 2 First of the Railway Labor Act (45 U.S.C. 152 First) provides:

"GENERAL DUTIES

"It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof."

Section 3 First (i) of the Railway Labor Act (45 U.S.C. 153 First (i)) provides:

"The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such dis-

putes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

Section 3 Second of the Railway Labor Act (45 U.S.C. 153 Second) provides:

"Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this Act, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board."

APPENDIX B

Petitioner Brotherhood of Railroad Trainmen has asserted in Case No. 84, present Term, that there is no conflict of decisions between the Seventh Circuit's decision herein and the Fifth Circuit's decision in the *Central of Georgia* case. In its brief in opposition in No. 84, this same Brotherhood has stated (Br. 13-14):

4. There is no Conflict Between the Fifth and Seventh Circuits Warranting Certiorari in This Case

It is true that the Seventh Circuit in the case of *Chicago River and Indiana Railroad et. al* v. *Brotherhood of Railroad Trainmen* did not feel restrained in its issuance of an injunctive order, by the Norris-LaGuardia Act, while the Fifth Circuit in the instant case felt otherwise. Nevertheless the two courts were dealing with different problems. In the *Chicago River and Indiana* case only grievances were involved; whereas in the instant case a Section 6 notice for a new rule was the cause of the carrier's seeking an injunction. The *Chicago River and Indiana* case involved twenty-one "grievances." *Elgin* v. *Burley*, 325 U.S. 711, 89 L. ed. 1886, 65 S.Ct. 1282, classifies disputes of this character as "minor." It differentiates them from disputes involving the making of collective agreements and characterizes these disputes as "major" disputes. It is clear that the Railway Labor Act authorizes submission of such minor disputes to the Railroad Adjustment Board; and it vests the National Mediation Board with jurisdiction of "major disputes."

It is thus clear that the decision of the Seventh Circuit actually turned upon the handling of grievances whereas the Fifth Circuit case was one dealing with the rule making function of collective bargaining representatives. *Elgin* v. *Burley* undertakes to demonstrate the intention of Congress to provide separate

treatment for the two different types of disputes. The Seventh Circuit said:

> "Insofar as the Railway Labor Act, as we now interpret it, authorizes the issuance of injunctions to prevent strikes over *minor disputes*, it operates to repeal the provisions of the Norris-LaGuardia Act, to the extent that the wording thereof might otherwise be said to apply to such railway labor disputes. It follows that, in the case at bar, the district court has jurisdiction to entertain plaintiff's prayer for injunctive relief." (Emphasis supplied.)

While we are convinced that the Seventh Circuit decision is erroneous, we submit that it does not present such a conflict with the instant case as to warrant granting the writ of certiorari in the instant case. What Congress intended with reference to minor disputes is quite a different thing from its intention with respect to major disputes.[6]

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6. "What constitutes a 'conflict'? . . . The concept is not an exact one. One point may be stressed: the Court is interested in conflicts which impair uniformity of decision where uniformity is significant, conflicts which its decision in the particular case will remove. This rules out, of course, hosts of particularistic applications of general rules turning upon the analysis of special states of fact." ("The Business of the Supreme Court at October Term, 1933," Frankfurter and Hart, 48 Harv. L. Review, Rev. 238, 268.)